

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting
Investigation Into the Operations and Practice of
Arnold Ray Baeza, an Individual Doing Business
as Best Movers,

Respondent.

Investigation 01-06-021
(Filed June 14, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
SUPPLEMENTAL BRIEFING AND IDENTIFYING EXHIBITS**

1. Supplemental Briefing

Consumer Service Division's (CSD) opening brief contains the following single sentence requesting that the Commission impose fines and penalties. "The Commission should impose the appropriate fines and penalties provided at Article 8 of the Household Goods Carrier Act, California Public Utilities Code sections 5311 *et seq.*" (CSD Opening Brief at p. 4.)

This summary argument is problematic in two respects. Because the statutes cited by CSD contain language authorizing a penalty of not more than \$1,000 for a violation, (*see e.g.*, Pub. Util. Code § 5311), respondent does not have sufficient notice of the size of the penalty that CSD is recommending to respond to CSD's recommendation in the reply brief. Similarly, the Commission does not know the precise penalty which CSD is recommending.

A similar problem arises in respondent's brief. At page 6, respondent recommends that the Commission "impose reasonable terms to allow

Respondent to continue to work as a mover, but in a vastly superior, improved manner, fully insured, under the supervision of and with the assistance of the Commission, at Respondent's expense." However, respondent does not set forth specific recommended terms. This omission poses the same problem for CSD's response and for the Commission as set forth above.

Therefore, CSD and respondent shall file a supplemental brief no later than February 14, 2002. CSD shall state the precise amount of the recommended fine or penalty, as well as the specific justification therefore, with specific citations to the facts of the case and to the specific statutes relied upon for imposing the fine. CSD should also address the criteria set forth in Decision (D.) 98-12-075, Appendix B, which provided for guidance in subsequent cases determining a fine.¹

Similarly, Respondent shall set forth his specific recommendations of what constitutes "reasonable terms" as set forth in his brief.

The parties may file replies to the supplemental briefs no later than February 25, 2002. Please note that both the supplemental brief and the reply are to be filed with the Commission's Docket Office according to the Commission's Rule of Practice and Procedure.²

¹ D.98-12-075 did not specifically address the Household Goods Carrier Act, but rather, the Commission's broader statutory authority under, among other statutes, Pub. Util. Code § 2107. However, the criteria concern fines and penalties, which are issues relevant to the instant proceeding.

² Respondent served, but did not properly file his brief with the Commission. On January 22 and 23, 2002, I telephonically instructed his attorney's office how to tender a brief for late-filing with the Commission. If respondent wishes his brief to be considered, he shall comply with this direction.

2. Evidentiary Record

At the November 28, 2001 prehearing conference, and as supplemented by my November 30, 2001 ruling, the following items constitute the evidentiary record in this case and are received as exhibits:

A. CSD's Exhibit

- Declaration of James H. Badgett and Attachment A through R. (Exhibit 1);
- Supplemental Declaration of William G. Waldorf with attachments, dated August 17, 2001, with transmittal letter from Mr. Lee to Mr. Kosnett dated August 28, 2001. (Exhibit 2);
- Declaration of Judy Carlyle dated November 30, 2001, with addendum dated November 30, 2001 and attachments. (Exhibit 3);
- Declaration and Supplemental Report of William G. Waldorf dated November 29, 2001. (Exhibit 4);
- Declaration and Supplemental Report of William G. Waldorf dated January 3, 2002. (Exhibit 5);

B. Respondent Baeza's Exhibits

- Declaration of Arnold Ray Baeza dated December 13, 2001. (Exhibit 10);
- Supplemental Declaration of Arnold Ray Baeza dated December 18, 2001. (Exhibit 11).

IT IS RULED that:

1. The parties shall file supplemental briefs and may file replies as more fully described in Section 1 of this ruling. CSD and respondent shall file the supplemental briefs no later than February 14, 2002, and may file replies no later than February 25, 2002. The parties shall file and serve these briefs in accordance with the Commission's Rules of Practice and Procedure.

2. The exhibits as identified and marked in Section 2 are received into the record.

Dated January 25, 2002, at San Francisco, California.

/s/ Janet A. Econome
Janet A. Econome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Requesting Supplemental Briefing and Identifying Exhibits on all parties of record in this proceeding or their attorneys of record.

Dated January 25, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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I.01-06-021 JJ/avs